[redacted]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No.

UNITED STATES RUBBER COMPANY, A CORPORATION, L. CANDEE & CO., A CORPORATION, AND METROPOLITAN NATIONAL BANK OF CHICAGO, A CORPORATION,

Petitioners,

vs.

AMERICAN OAK LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, THOMAS E. WILDER AND JOHN WILDER, CO-PARTNERS AS WILDER & COMPANY, EAGLE TANNING WORKS, UNITED STATES LEATHER COMPANY, LAMBEAU LEATHER COMPANY, THE BARBER BROS. COMPANY, BOSTON BLACKING CO., BULLETIN & GOOD ROADS, CARSON-PIRIE MONTHLY CO., CARVER COTTON GIN CO., CALVERT LITHOGRAPHING & ENGRAVING CO., B. E. COLE & CO., COLBURN, FULLER & CO., CONSUMERS' BOX MANUFACTURING CO., THE CONTINENT SHOE COMPANY, CROOKS, ROOT & CO., CYCLING GAZETTE, EASTON BOOT & SHOE COMPANY, ESTABROOK-ANDERSON SHOE COMPANY, FARNSWORTH, HOYT & CO., I. P. FARNUM, C. C. FARWELL & CO., P. A. FIELD & CO., FLETCHER MF'G CO., A. F. GALLUM & SONS, H. M. GEORGE & CO., GOLDSMITH, ROSENBUSH & LEVIE, GOODYEAR RUBBER CO., THE R. J. GUNNING CO., M. L. HILLER & SONS, A. J. MARCUS & CO., J. & H. MAYER, H. MICHAELS & CO., MILWAUKEE TACK CO., W. J. McBRIDE, PLIABLE SHOE CO., ROUSE, MANIERE, WILLIAMS & CO., SHATTUCK & BINGER, A. W. SHAW & CO., T. J. SHAY & CO., THE SINGER MANUFACTURING CO., W. W. SPAULDING, SPINNEY, VIRTUE & CO., STOWE, BILLS & HAWLEY, THILMANY PULP & PAPER MILLS, TUBULAR RIVET & STUD COMPANY, UNIVERSITY OF CHICAGO WEEKLY, GEORGE H. VAN PELT, WACHUSETT MILLS, WEIR BROS. PAPER CO., CONSOLIDATED HAND METHOD LASTING MACHINE CO., HILLIARD & MERRILL, TRIPP GIANT LEVELLER CO., DRY GOODS REPORTER CO., E. H. VAN INGEN & CO., C. H. FARGO & CO. AND JOHN C. AMES, UNITED STATES MARSHAL.

PETITION FOR CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

Your petitioners, United States Rubber Company, a corporation organized under the laws of the State of New Jersey, L. Candee & Co., a corporation organized under the laws of the State of Connecticut, and the Metropolitan National Bank of Chicago, a banking corporation organized under the National banking laws of the United States, respectfully represent unto your Honors—

1. That on the 11th day of September, 1896, the American Oak Leather Company, one of the respondents hereto, instituted in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, a suit in chancery against these petitioners, C. H. Fargo & Co., a corporation of Illinois, and John W. Arnold, United States Marshal for the Northern District of Illinois, in which it was averred that defendants were citizens of the states of Illinois, Connecticut and New Jersey, while complainant was a citizen of the State of Ohio, and that the complainant had recovered a judgment against C. H. Fargo & Co., upon which an execution had been issued and returned *nulla bona*, and in which bill said complainant set forth, and sought to have adjudged fraudulent as against the creditors of C, H. Fargo & Co., the following preferences given by C. H. Fargo & Co., on or prior to August 6, 1896, to-wit:

Two judgments by confession against Fargo & Co., entered August 6, 1896, in the United States Circuit Court at Chicago, one in favor of the United States Rubber Company for $145,400, upon a judgment note due on demand for $140,000, dated January 6, 1896, and one in favor of the petitioner, L. Candee & Co., for $38,300, upon a judgment note of the same date, due on demand, for $51,500.

An assignment of book accounts August 6, 1896, by Fargo & Co., to the petitioner, United States Rubber Company.

A judgment by confession in a state court at Chicago, August 6, 1896, against Fargo & Co. in favor of petitioner, Metropolitan National Bank, for $25,250, upon a judgment note dated August 5, 1896, payable to said bank, for $25,000.

Two warranty deeds from Fargo & Co. to said bank, dated August 6, 1896, conveying Fargo & Co.'s factory at Dixon, Illinois.

2. That subsequently other creditors (respondents herein), whose claims aggregate $151,194.09, joined complainant in said suit.

3. That at the time of the filing said bill the tangible assets of said C. H. Fargo & Co. had been levied upon, and were held, under executions issued upon said judgments in favor of the petitioners United States Rubber Company and L. Candee & Co.; and that after the filing of said bill the court appointed a receiver of said assets, including the book accounts assigned as aforesaid, and that said assets and accounts have now been converted into money, and said receiver now has in his hands the sum of about $111,000, subject to such disposition as shall be made thereof by the decree in said suit.

4. That thereafter answers were filed by petitioners to said bill, and the said cause having been brought to issue was referred by the court to a master in chancery "to take proofs therein and report the same, together with his conclusions thereon as to the facts only," and that after a hearing the master reported at length the facts in said case (Rec., p. 158-171), and found that in the giving of the preferences aforesaid there was no fraud in fact or want of good faith shown on the part of these petitioners or said Fargo & Co.

5. That thereafter the Circuit Court (Judge Grosscup presiding) on the 4th day of May, 1899, approved, ratified and confirmed said master's report, but held and adjudged said preferences aforesaid to be *constructivel* fraudulent, and by its decree set aside all of said preferences and directed said money in the hands of said receiver to be distributed *pro rata* among said creditors of C. H. Fargo & Co., including these petitioners.

6. That thereafter these petitioners prosecuted their appeal to the Circuit Court of Appeals of the Seventh Judicial Circuit, alleging that said Circuit Court had erred in holding said preferences constructively fraudulent, and said American Oak Leather Company and other creditors prosecuted to said court their cross appeal, alleging that said Circuit Court had erred in permitting these petitioners to share *pro rata* with the other creditors in the distribution of said fund.

7. That thereafter said two appeals were heard together before said Circuit Court of Appeals composed of their Honors Mr. Justice Brown, Judge Woods and Judge Jenkins, and that Court, on the 3rd day of October, 1899, by order or decree reversed the decree of the Circuit Court in part and remanded said cause to the Circuit Court, with directions to exclude petitioners from participation in the distribution of said fund, which decision and order of said Circuit Court of Appeals, as petitioners are advised, is final under the act of Congress of March 3, 1891, unless a writ of *certiorari* issue herein.

8. That in the decision of said Circuit Court of Appeals the three judges thereof concurred in holding said preferences constructively fraudulent, but his Honor Mr. Justice Brown dissented from the decision of said court in so far as it held the conduct of petitioners in and about the taking of said preferences such as to justify the court in depriving them of their right to participate in the distribution of said assets of Fargo & Co., Mr. Justice Brown in this recpect concurring with the Circuit judge, who, as already stated, also held these petitioners entitled to share *pro rata* in the distribution of said fund.

9. That the Circuit Court of Appeals decided that cer-

tain preferences acquired by means of judgment notes by two of said petitioners were constructively fraudulent, because, immediately after the giving of said notes and as a part of the agreement between C. H. Fargo & Co. and said petitioners which resulted in the giving of such preferences, clerks in the office of counsel for said petitioners became, and continued until the entry of said judgments, the majority of the board of directors of said debtor corporation, without notice thereof to the general creditors of said company; and petitioners are advised by counsel that such decision is inconsistent with the decisions in similar cases of this court and of the Supreme Court of Illinois, where said preferences were given, and that in order to secure uniformity of decision thereupon, and because said question is one of gravity and importance, your petitioners are advised by counsel and believe that said decision of said Circuit Court of Appeals ought to be reviewed, and said question be finally settled by this court through a writ of *certiorari* herein, to said Circuit Court of Appeals.

10. That your petitioners are also advised by counsel that the question whether the conduct of petitioners in the taking of such preferences was such as to deprive them of their rights as general creditors, is of such gravity, importance and frequent recurrence as to justify the decision thereof by a greater unanimity of judicial opinion than exists in the said Seventh Circuit, and that to that end, said question ought to be decided by this court by means of a *certiorari* herein to said Circuit Court of Appeals.

That your petitioners present herewith and make a part of this petition a certified copy and transcript of the record of this case in said Circuit Court of Appeals.

Wherefore your petitioners pray that this court issue a

writ of *certiorari* to the United States Circuit Court of Appeals for the Seventh Judicial Circuit, directing it to certify to this court a record of its proceedings in said cause.

UNITED STATES RUBBER CO.,
L. CANDEE & CO.,
METROPOLITAN NATIONAL BANK,
By HENRY S. ROBBINS,
Their Solicitors.

EDWARD S. ISHAM.
GEORGE A. FOLLANSBEE,
Of Counsel.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

Gilbert E. Porter, being duly sworn, says that he is one of the attorneys and the agent in this behalf for the petitioners named in the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true in substance and in fact, except as to the matters which are therein stated to be on information and belief, and that as to those matters he believes said petition to be true.

GILBERT E. PORTER.

Subscribed and sworn to this.....day of October, 1899.

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Notary Public.